MARTIN v. THE WORLD PIANO COMPANY.

[Orig. Civil Juris. (Carey, J.) April 3, 1947]

Leases and Tenancies (War Absentees) Adjustment Ordinance (No. 18 of 1946)—Claim for return of a piano—Owner entitled to recover it notwithstanding that the person in whose possession it is found may be a bona fide purchaser for value.

In this case the plaintiff claimed the return of a baby-grand piano. It appeared that she had bought the piano in question in Colombo, Ceylon and was in possession of it for at least ten years prior to 1941. In December 1941 when the plaintiff was compulsorily evacuated from Penang in anticipation of the impending Japanese occupation of the Island, the piano was at her husband's residence at 9, Lim Mah Chye Road, Penang. The plaintiff's husband was interned during the Japanese occupation and returned to Penang on or about the 21st October 1946. The plaintiff returned later and both she and her husband examined and identified the piano at the shop of the defendant. The defendant claimed to have bought the piano on the 30th April 1946 in a dilapidated condition and they further claimed that they had expended in material and labour a sum of $425/- in repairing it.

Held, that, on the facts the piano had not been purchased in good faith without knowledge of the defective title and that in any case the plaintiff was empowered under the Leases and Tenancies (War Absentees) Adjustment Ordinance to follow and recover it notwithstanding that the person in whose possession it was found was a **bona fide** purchaser for value.

Case referred to: —

(1) *Cundy v. Lindsay* 3 Appeal Cases 459.

CIVIL SUIT.

R. D. Hume for Plaintiff.

G. H. Goh for Defendants.

Carey, J. :—The plaintiff claims the return of a Weisbrod baby-grand piano the property of the plaintiff or $1.500/- its value, $100/- damages for the detention thereof and costs.

The defendants in their Statement of Defence denied ownership of the piano in the plaintiff and alternatively that if the plaintiff ever was the owner she abandoned the piano in December 1941 and/or made no provision for its future care and maintenance. They claim to have bought the piano in question on the 30th April 1946 in a dilapidated condition and to have expended in material and labour a sum of $425/- in repairing it.

The facts are that the plaintiff bought the piano in question in Colombo, Ceylon and was in possession of it for at least ten years prior to 1941. In December 1941 when the plaintiff was compulsorily evacuated from Penang in anticipation of the impending Japanese occupation of the island, the piano was at her husband's residence, 9 Lim Mah Chye Road, Penang. She was obliged to leave the piano there. The plaintiff's husband, an internee during the Japanese occupation, returned to Penang on about the 21st October, 1946. He unsuccessfully endeavoured to recover possession of the house, 9 Lim Mah Chye Road which he had held on a monthly tenancy pre-war. A list of furniture then in his house did not disclose the piano. On making enquiries and searching however, he found the piano in the shop of the defendant company in Bishop Street and was able to identify it. His wife arrived in Penang shortly afterwards and he and she examined and identified the piano. Thereupon a claim for its return was made by the plaintiff's solicitors. The plaintiff's husband alleges that when he first saw the piano in defendant company's premises he enquired of a man there, where the piano came from and was informed "Sumatra", and he says that on that and the next occasion a key-board lid bearing a name "Naussens" carved therein was on the piano. The suggestion therefore is that the defendant company was endeavouring to mislead as to the origin and disguise the identity of the piano thereby negativing their good faith and lack of notice of tainted origin. It is significant in this connection to note that the defendant company is constituted by two partners of whom one, who gave evidence herein, was not in the shop on the four occasions when the plaintiff's husband called and the other, who presumably was the one with whom plaintiff's husband conversed in the shop, was in Court during the hearing and was not called to give evidence as to the alleged statement regarding the piano coming from Sumatra or the key-board lid marked "Naussens".

There is no doubt as to the identification of the piano as the property of the plaintiff, and it is established that it was left in the house of plaintiff's husband at 9, Lim Mah Chye Road when the plaintiff was evacuated from there.

Counsel for the plaintiff has referred to the Leases and Tenancies (War Absentees) Adjustment Ordinance (No. 18 of 1946) as applying in this case. But section 9, on which he specifically relies, relates to a pre-occupation tenancy where the tenant was a war absentee and the landlord was not a war absentee. There is no evidence to show whether or not the landlord of 9, Lim Mah Chye Road was a war absentee. However, as Section 15 sub-section (d) in conjunction with Section 9 sub-sections (2), (3) and (4) and Section 13 sub-section 2 gives a similar right to recover furniture where both the landlord and tenant of a pre-occupation tenancy are war absentees, this defect would not seem to be material.

Plaintiff also relies on the settled and well-known rules of law with regard to the title to personal property expressed by the then Lord Chancellor, Lord Cairns, in *Cundy vs. Lindsay*[1] as follows:—

> By the law of our country the purchaser of a chattel takes the chattel as a general rule subject to what may turn out to be certain infirmities in the title. If he purchases the chattel in market overt, he obtains a title which is good against all the world; but if he does not purchase the chattel in market overt, and if it turns out that the chattel has been found by the person who professed to sell it, the purchaser will not obtain a title good as against the real owner. If it turns out that the chattel has been stolen by the person who has professed to sell it, the purchaser will not obtain a title. If it turns out that the chattel has come into the hands of the person who professed to sell it, by a **de facto** contract, that is to say, a contract which has purported to pass the property to him from the owner of the property, there the purchaser will obtain a good title, even although afterwards it should appear that there were circumstances connected with that contract, which would enable the original owner of the goods to reduce it, and to set it aside, because these circumstances so enabling the original owner of the goods, or of the chattel, to reduce the contract and to set it aside, will not be allowed to interfere with a title for valuable consideration obtained by some third party during the interval while the contract remained unreduced.

The piano was sold in the first instance, insofar as we know, by one Macartney, a Welfare Officer, dressed in a military type of uniform, on the 10th April, 1946, at the Salvation Army Club in Burmah Road, Penang to a photographer, one Sheik Sulieman Rafee of 235, Burmah Road for $175/-. He, finding that repair of the piano would cost too much, re-sold to the defendant company for $330/-, and handed over the receipt given to him by Macartney.

There was never any contract whereby the ownership or possession of the piano was passed by the plaintiff. Being private personal property it did not pass to the occupying power, nor after the enemy occupation period, to members of the relieving forces. Whether it was removed from 9, Lim Mah Chye Road by the Japanese troops or by the Allied Forces on re-occupation or looted by any other unauthorised person, the original purchaser and the defendant company had every reason to suspect that there was not a good title to the ownership in the seller. In short the piano was not purchased in good faith without knowledge of the defective title. But even had it been removed and sold by any person other than the pre-occupation tenant or his duly constituted agent, the plaintiff is empowered under the Leases and Tenancies (War Absentees) Adjustment Ordinance to follow and recover it notwithstanding that the person in whose possession it is found may be a bona fide purchaser for value.

It is therefore ordered that the piano in question be returned to the plaintiff forthwith and that the defendant company do pay the plaintiff's costs of this suit.

The claim for damages for detention having been dropped, none are awarded.

There was no formal set-off or counterclaim by the defendant company and so no order for payment for work and labour done and materials supplied can be made, but plaintiff's counsel has intimated that his client is still willing to pay $150/- to the defendant company in respect of these items. In view of the evidence of the condition of the piano when sold by Macartney and now, I am satisfied that considerable work was successfully done on it. Perhaps on further examination of the piano the plaintiff may be disposed slightly to increase this payment.

Order Accordingly.

IN RE KIM CHWEE CHIA.

[Orig. Civil Juris. (Willan, C.J.) June 21, 1947]

Advocates and Solicitors Ordinance 1947, Section 5.—Whether period during which a petitioner has attended and received instruction in law prior to filing his petition can count against the period required by Sub-section 3 of Section 5 of the Ordinance—Application to shorten Statutory period required by Sub-section 3 of Section 5 of the Ordinance and to shorten the period during which the notice referred to in Sub-section (2) of Section 5 of the Ordinance is required to be posted.—What special grounds are contemplated by Sub-section 5 of Section 5 of the Ordinance.

The Petitioner in his Petition for Admission applied to the Court under Sub-section 5 of Section 5 of the Advocates and Solicitors Ordinance, 1947 to (a) shorten the time during which the notice referred to in Sub-section (2) of Section 5 is required to be posted; and (b) shorten the period during which the petitioner is required to attend and receive instruction in law in an office in the Malayan Union of a practising practitioner of not less than seven years' standing at the Bar of the Federated Malay States or one of the Straits Settlements or of the State of Johore or of the Malayan Union or any two or more of such Bars. The petitioner, a barrister of England, had read in the Chambers of a practising barrister in England for six months and had attended and received instruction in law as required by Sub-section (3) of Section 5 of the Ordinance for a period of almost eleven months. The petitioner had also served as a barrister at law in the Civil Affairs (Malaya Planning Unit) in London, in the British Military Administration, Malaya, and in the Government of the Malayan Union. The last of the notices required to be posted under Sub-section (2) of Section 5 of the Ordinance was in this case, posted on the 8th of March 1947.